

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**



IN THE MATTER OF:)

Dudley Lumber Company, Inc.)

Salem, Lee County, Alabama)

Air Facility ID No. 206-S003)

CONSENT ORDER NO. XX-XX-XX

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter, the "Department" and/or "ADEM") and Dudley Lumber Company, Inc. (hereinafter, the "Permittee") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), the Alabama Air Pollution Control Act, Ala. Code §§22-28-1 to 22-28-23 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto.

STIPULATIONS

- 1) The Permittee is the owner and/or operator of a sawmill, ADEM Air Facility ID No. 206-S003 (hereinafter, the "Facility") located in Salem, Lee County, Alabama.
- 2) The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).
- 3) Pursuant to Ala. Code §§ 22-22A-4(n) (2006 Rplc. Vol.), the Department is the state air pollution control agency for the purposes of the federal Clean Air Act, 42 U.S.C. 7401

to 7671q, as amended. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Air Pollution Control Act, Ala. Code §§22-28-1 to 22-28-23 (2006 Rplc. Vol.).

4) On February 7, 2012, the Department issued Major Source Operating Permit No. 206-S003 (hereinafter, "MSOP") to the Permittee authorizing the operation of a sawmill (hereinafter, the "Facility").

5) Under Emission Unit No. 006, Unit Specific Proviso No. 5a of its MSOP states :

The permittee shall maintain records of emissions monitoring performed in a permanent form on-site and available for inspection for at least five (5) years from the date of generation of each records.

6) In accordance with Standards of Performance for New Stationary Sources (NSPS), 40 CFR 60, Subpart D_c, and listed under Emission Unit No. 002, Unit Specific Proviso No. 5b of its MSOP states:

The permittee shall maintain records of daily or monthly fuel usage on-site in a permanent form suitable for inspection for at least five (5) years from the date of generation of each record.

7) General Proviso No. 9 of its MSOP states :

Any application form, report, test data, monitoring data, or compliance certification submitted pursuant to this permit shall contain certification by a responsible official to truth, accuracy, and completeness. This certification shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate and complete.

8) General Proviso No. 21a of its MSOP states:

Reports to the Air Division of any required monitoring shall be submitted at least every 6 months. All instances of deviations from permit requirements must be clearly identified in said reports. All required reports must be certified by a responsible official consistent with ADEM Admin. Code r. 335-3-16-.04(9).

9) Emission Unit Nos. 001 and 002 are subject to 40 CFR 63, Subpart JJJJJ

requiring a one-time energy assessment, an initial performance tune-up, a Biennial Compliance Report, and the Notification of Compliance Status. These requirements are listed in 40 CFR §63.11201 and §63.11225. These requirements were incorporated into the MSOP under the Emission Unit Nos. 001 and 002 Unit Specific Provisos.

10) On November 8, 2012, the Department issued Air Permit No. 206-S003-X009 (hereinafter, "Permit X009") to the Permittee authorizing the construction and operation of a sawmill and chipper operation. Under Proviso No. 22 of this Permit, the Permittee is required to submit an annual compliance certification for the provisos listed in Permit X009.

11) On February 28, 2013, the Department issued Air Permit No. 206-S003-X010 (hereinafter, "Permit X010") to the Permittee authorizing the construction and operation of an 8.9 MBF/hr Steam-heated Continuous Operation Kiln.

12) Proviso No. 26 of Permit X010 states:

In the Semiannual Monitoring Reports required by General Proviso No. 21 of the facility's Major Source Operating Permit, the permittee shall submit a report to the Air Division that includes the 12-month rolling totals of the lumber production calculated during the respective reporting period (i.e. each report would contain six 12-month rolling totals and the monthly total upon which each is based).

13) Proviso No. 27 of Permit X010 states:

The Permittee shall submit an annual compliance certification to the Air Division for the conditions of this permit with the Annual Compliance Certification required by General Proviso No. 12 of its MSOP.

DEPARTMENT'S CONTENTIONS

14) On March 15, 2012, April 9, 2013, September 4, 2013, March 10, 2014, and March 10, 2015, the Department received the Permittee's Semiannual Monitoring Reports

(SMR) after the respective March 1st and August 29th deadlines listed in the MSOP Renewal cover letter of February 7, 2012. Each of the envelopes containing the SMR submittals were postmarked after the respective deadlines had expired.

15) On September 26, 2013, the Department issued a Notice of Violation (NOV) to the Permittee for late submittal of the SMR's to the Department.

16) On November 21, 2013, the Department issued a warning letter to the Permittee for missing planer mill visible emissions observation records, which were discovered by the Department during an inspection conducted on October 24, 2013.

17) On March 30, 2015, the Department conducted an inspection of Permittee's Facility, which revealed the following:

a) The Permittee was unable to provide records of visible emissions observations on the planer mill cyclone after October 30, 2014.

b) The Permittee was unable to provide fuel usage records for Boiler No. 2 after October 31, 2014.

c) The Permittee was unable to provide information regarding the compliance status for the Boilers affected under 40 CFR 63, Subpart JJJJJJ for Area Source Boilers, which require the completion of a one-time energy assessment, an initial boiler tune-up, submittal of the Notification of Compliance Status, and submittal of the Biennial Compliance report.

18) On March 10, 2015, the Department received a SMR containing inaccurate and incomplete data.

a) The SMR inaccurately certified that the visible emission observations for the planer mill were being maintained as required by Permit X010.

b) The SMR did not contain information required by Permit X010 for the continuous

kiln.

c) The SMR should have included six 12-month rolling totals of the lumber production calculated during the respective reporting period.

d) The SMR was certified by the Permittee's responsible official as being "true, accurate, and complete" when it was not.

19) On March 25, 2015, the Department received a revised Annual Compliance Certification (ACC) containing inaccurate and incomplete data

a) The ACC inaccurately certified continuous compliance of the fuel usage records for Emission Unit No. 002 (Boiler No. 2) and the visible emission observation records for the planer mill.

b) The revised ACC did not contain information as required by Permit X009 and Permit X010.

c) The revised ACC was certified by the Permittee's responsible official as being "true, accurate, and complete" when it was not.

20) On April 17, 2015, the Department issued an NOV to the Permittee addressing the late submittal of SMRs, inaccurate information contained in ACC and SMR, missing visible emissions records, missing fuel usage records, and missing compliance information related to 40 CFR 63, Subpart JJJJJ for Area Source Boilers.

21) On May 22, 2015, the Department received a response to the April 17th NOV from a consultant for the Permittee. The response addressed the listed concerns and included the missing compliance information related to 40 CFR 63, Subpart JJJJJ. The Permittee has completed all the requirements but not by the deadlines set forth in 40 CFR §63.11225.

22) Pursuant to Ala. Code §22-22A-5(18)c. (2006 Rplc. Vol.), in determining the

amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATION:

- (1) The Department considers the Permittee's late submittals of SMRs to be serious.
- (2) The Department considers the Permittee's submittal of inaccurate and incomplete information in the ACC and the Semiannual Monitoring Report to be serious.
- (3) The Department considers the Permittee's failure to maintain visible emissions observations of the planer mill to be serious.
- (4) The Department considers the Permittee's failure to maintain the fuel usage records for Boiler No. 2 as required by the NSPS, 40 CFR 60, Subpart D_c, to be serious.
- (5) The Department considers the Permittee's failure to comply with 40 CFR 63, Subpart JJJJJ in a timely fashion to be serious.

B. THE STANDARD OF CARE: The Permittee did not exhibit a standard of care commensurate with applicable regulatory standards and the Permits by failing to submit reports in a timely fashion, failing to submit accurate reports, failure to maintain visible emissions

observations, failure to maintain fuel usage records, and failure to complete requirements under 40 CFR 63, Subpart JJJJJ in a timely fashion.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has determined that there was no significant economic benefit gained by the Permittee as a result of the violations referenced herein.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: There are no known environmental effects to mitigate as a result of the alleged recordkeeping and reporting violations.

E. HISTORY OF PREVIOUS VIOLATIONS: The Department issued a Consent Order to the Permittee on February 11, 2002, for exceeding monthly fuel usage and exceeding the allowed 46 MMBF production rate during any 12-month rolling period. The Department issued a Warning Letter to the Permittee on February 24, 2003, for allowing visible emissions greater than 20% opacity. The Department issued a Warning Letter to the Permittee on September 24, 2012, for failure submit an application to construct prior to commencing construction of a sawmill. The Department issued a NOV to the Permittee on September 26, 2013, for late submittal of SMR's to the Department. The Department issued a Warning Letter to the Permittee on November 21, 2013, for missing visible emission observations for the planer mill cyclone.

F. THE ABILITY TO PAY: The Permittee has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty warranted in this matter in the spirit of cooperation and the desire to resolve this matter

amicably, without incurring the unwarranted expense of litigation.

23) The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c., *as amended*, as well as the need for timely and effective enforcement and, based upon the foregoing and attached contentions, has concluded that the civil penalty herein is appropriate (see Attachment A, which is made a part of Department's contentions).

24) The Department neither admits nor denies Permittee's contentions, which are set forth below. The Department has agreed to the terms of this Consent Order in an effort to resolve the alleged violations cited herein without the unwarranted expenditure of State resources in further prosecuting the above violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

PERMITTEE'S CONTENTIONS

25) Permittee neither admits nor denies the Department's contentions. Permittee consents to abide by the terms of this Consent Order and to pay the civil penalty assessed herein.

ORDER

THEREFORE, the Permittee, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code §22-22A-5(18)c., *as amended*, as well as the need for timely and effective enforcement, and has determined that the

following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Permittee agree to enter into this ORDER with the following terms and conditions:

A. The Permittee agrees to pay to the Department a civil penalty in the amount of \$5,000.00 in settlement of the violations alleged herein within forty-five days from the effective date of this Consent Order. Failure to pay the civil penalty within forty-five days from the effective date may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. The Permittee agrees that all penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

C. The Permittee agrees to comply with the terms, limitations, and conditions of the Permit and the Department's regulations immediately upon the effective date of this Consent Order and every day thereafter.

D. The parties agree that this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

E. The parties agree that this Consent Order, subject to the terms of these presents and subject to provisions otherwise provided by statute, is intended to operate as a full resolution

of the violations which are cited in this Consent Order.

F. The Permittee agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

G. For purposes of this Consent Order only, the Permittee agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. The Permittee also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, the Permittee shall be limited to the defenses of *Force Majeure*, compliance with this Agreement and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of the Permittee, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of the Permittee) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control and without the fault of the Permittee, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

H. The Department and the Permittee agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future concerning the facility which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate, and the Permittee shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order if future orders, litigation or other enforcement action address new matters not raised in this Consent Order.

I. The Department and the Permittee agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and the Permittee does hereby waive any hearing on the terms and conditions of same.

J. The Department and the Permittee agree that this Order shall not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations.

K. The Department and the Permittee agree that final approval and entry into this Order are subject to the requirements that the Department give notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Order.

L. The Department and the Permittee agree that, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

M. The Department and the Permittee agree that any modifications of this Order must

be agreed to in writing signed by both parties.

N. The Department and the Permittee agree that, except as otherwise set forth herein, this Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve the Permittee of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

DUDLEY LUMBER COMPANY, INC

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

Berry C. Dudley
(Signature of Authorized Representative)

Lance R. LeFleur
Director

Berry C. Dudley
(Printed Name)

Date Executed

Vice-President
(Printed Title)

7-10-15
Date Signed

Attachment A

Dudley Lumber Company, Inc.
Salem, Lee County

Facility ID No. 206-S003

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Lack of Visible Emissions Records	1	\$750	\$250		
Lack of Fuel Usage Records	1	\$750	\$250		
Submitting inaccurate data on ACC / SMR	2	\$750	\$250		
Submitting late SMR's	5	\$1,000	\$250		
40 CFR 63, Subpart JJJJJ Compliance	1	\$500	\$250		
					Total of Three Factors
TOTAL PER FACTOR		\$3,750	\$1,250	\$0	\$5,000

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-)	
Ability to Pay (-)	
Other Factors (+/-)	
Total Adjustments (+/-) <i>Enter at Right</i>	\$0

Economic Benefit (+)	
Amount of Initial Penalty	\$5,000
Total Adjustments (+/-)	\$0
FINAL PENALTY	\$5,000

Footnotes

* See the "Department's Contentions" portion of the Order for a detailed description of each violation and the penalty factors.